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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

M/V COSCO BUSAN, LR/IMO Ship. No. 9231743
her engines, apparel, electronics, tackle, boats,
appurtenances, etc., in rem, THE SHIPOWNERS'
INSURANCE & GUARANTY COMPANY LTD.,
REGAL STONE, LTD., FLEET MANAGEMENT,
LTD., and JOHN COTA, in personam,

Defendants.

) Case No. C 07 06045 (SC)

) IN ADMIRALTY

) **NOTICE OF MOTION AND MOTION
TO CONSOLIDATE CASE NOS.
C 07 06045 (SC), CV 07 05800 (SC),
CV 08 02052 (SC), CV 08 2268 (SC),
CV 08 5098 (SC) FOR PRETRIAL
PURPOSES; MEMORANDUM OF
POINTS & AUTHORITIES IN SUPPORT
THEREOF**

) F.R.C.P. 42(a)(2)

REGAL STONE LIMITED, FLEET
MANAGEMENT LTD,

Counterclaimants,

vs.

UNITED STATES OF AMERICA,

Counterdefendant.

) Date: January 23, 2009

) Time: 10:00 a.m.

) Dept.: 1 (Hon. Samuel Conti)

KYL_SF471395

1 UNITED STATES OF AMERICA,)
 2)
 3) Plaintiff,)
 4) (FRCP 14(c)))
 5)
 6) vs.)
 7)
 8) CHARLES CALZA, M.D.,)
 9)
 10) Third-Party Defendant.)
 11) (FRCP 14(c)))
 12)

13 **ACTIONS FOR WHICH PRE-TRIAL CONSOLIDATION IS SOUGHT**

14 CHELSEA, LLC, MARK RUSSO, and ALLEN) Case No. C-07-5800-SC
 15 LORETZ, individually and on behalf of all others)
 16 similarly situated,)
 17)
 18) Plaintiff,)
 19)
 20) vs.)
 21)
 22) REGAL STONE, LTD., HANJIN SHIPPING CO.,)
 23) LTD., SYNERGY MARITIME, LTD, FLEET)
 24) MANAGEMENT, LTD, and JOHN COTA, *In*)
 25) *Personam*; M/V COSCO BUSAN, their engines,)
 26) tackle, equipment, appurtenances, freights, and cargo)
 27) *In Rem*,)
 28)
 29) Defendant.)
 30)

31 RLI INSURANCE COMPANY,) Case No. C-08-2052-SC
 32)
 33) Plaintiff-in-Intervention,)
 34)
 35) vs.)
 36)
 37) REGAL STONE LIMITED; FLEET)
 38) MANAGEMENT, LTD.; and the M/V COSCO)
 39) BUSAN, LR/IMO Ship No. 9231743, her engines,)
 40) apparel, electronics, tackle, boats, appurtenances,)
 41) etc., *in rem*,)
 42)
 43) Defendants.)
 44)

45 REGAL STONE LIMITED and FLEET)
 46 MANAGEMENT, LTD.,)
 47)
 48) Counterclaimants,)
 49)
 50) vs.)
 51)
 52) THE CONTINENTAL INSURANCE COMPANY,)
 53)
 54) Counterdefendant.)

1 THE PEOPLE OF THE STATE OF CALIFORNIA,)
 2 acting by and through the DEPARTMENT OF)
 3 TRANSPORTATION,)

Plaintiff,)

vs.)

4 REGAL STONE LIMITED, HANJIN SHIPPING)
 5 CO., LTD., CONTI CAIRO KG, NSB)
 6 NEIDERELBE, SYNERGY MARITIME, LTD., *in*)
 7 *personam*; M/V COSCO BUSAN, their engines,)
 8 tackle, equipment, appurtenances, freights, and cargo)
 9 *In Rem*,)

Defendants.)

REGAL STONE LIMITED,)

Counter-Claimant,)

vs.)

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)
 13 acting by and through the DEPARTMENT OF)
 14 TRANSPORTATION,)

Counter-Defendant.)

17 REGAL STONE LIMITED, and FLEET)
 18 MANAGEMENT, LTD,)

Plaintiffs,)

vs.)

21 JOHN J. COTA, an individual, THE SAN)
 22 FRANCISCO BAR PILOT'S ASSOCIATION, an)
 23 unincorporated association, PETER McISAAC, an)
 24 individual, and RUSSELL NYBORG, an individual,)

Defendants.)

Case No. C 08 02268 (SC)

Case No. CV 08 5098 (SC)

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 23, 2009 at 10:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 1 of the above-entitled Court, the Honorable Samuel Conti presiding, REGAL STONE LIMITED (“Regal”) and FLEET MANAGEMENT LTD. (“Fleet”) (collectively, “Moving Parties”) will move this Court for an order consolidating for *pre-trial purposes* this action with the following related cases:

- *Chelsea, LLC v. Regal Stone Limited, et al.*, Case No. CV 07 05800 (SC).
- *The Continental Insurance Co. v. Regal Stone Limited, et al.*, Case No. CV 08 02052 (SC).
- *The People of the State of California v. Regal Stone Limited, et al.*, Case No. CV 08 2268 (SC).
- *Regal Stone Limited, et al. v. John J. Cota, The San Francisco Bar Pilot’s Association, et al.*, Case No. CV 08 5098 (SC).

This Motion is made pursuant to Rule 42(a) of the Federal Rules of Civil Procedure upon the grounds that these related actions (the “Cases”) involve common questions of law and fact and involve substantially the same principal parties. The Motion is premised upon the following general facts:

The Cases are all before this Court, have been determined by the Court to be related cases, involve common parties, and involve common questions of fact and law, including specifically the underlying transactions and occurrences that arise from the November 7, 2007 collision of the *M/V COSCO BUSAN* with the San-Francisco-Oakland Bay Bridge. Further, consolidation for pre-trial purposes will achieve a speedier resolution of the Cases and will lessen the risk of prejudice and inconsistent discovery and other pre-trial rulings. Finally, consolidation of the Cases will conserve the Court’s resources.

This Motion is based upon this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the pleadings, records and papers on file herein and in the

1 related Cases, and upon such further oral and documentary evidence as may be presented at the
2 hearing on this Motion.

3
4
5 DATED: December 19, 2008

/s/ Gordon C. Young
JOSEPH A. WALSH II
GORDON C. YOUNG
CHRISTOPHER A. STECHER
DAVID A. TONG
KEESAL, YOUNG & LOGAN
Attorneys for REGAL STONE LIMITED and
FLEET MANAGEMENT, LTD.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO CONSOLIDATE

I. INTRODUCTION

Moving Parties move under Federal Rule of Civil Procedure 42(a)(2) to consolidate for pre-trial purposes this action, Case No. 07 06045 (SC), and the following related Cases:

- *Chelsea, LLC v. Regal Stone Limited, et al.*, Case No. CV 07 05800 (SC).
- *The Continental Insurance Co. v. Regal Stone Limited, et al.*, Case No. CV 08 02052 (SC).
- *The People of the State of California v. Regal Stone Limited, et al.*, Case No. CV 08 2268 (SC).
- *Regal Stone Limited, et al. v. John J. Cota, The San Francisco Bar Pilot's Association, et al.*, Case No. CV 08 5098 (SC).

The Cases are pending before this Court and involve common parties.¹

The reasons for consolidating the Cases are straight-forward. The Cases arise from the same incident, i.e., the allision of the *M/V COSCO BUSAN* with the San Francisco-Oakland Bay Bridge on November 7, 2007 (the "Incident"). The various Parties seek damages from and/or judicial determinations regarding, among others, Regal and Fleet arising out of the Incident. In all cases, Moving Parties have asserted defenses and/or affirmative claims seeking to allocate responsibility for the Incident to other Parties.

Not surprisingly, the Cases involve numerous common issues of fact and law. Thus, if all the claims go to trial, the trier-of-fact will be charged with allocating fault for the Incident among each of the Parties. All of the Cases should be consolidated for pretrial purposes to avoid inconsistent rulings, to avoid duplicative discovery and motion practice and for the purpose of judicial economy.

¹ Pursuant to Federal Rule of Evidence 201(d), Moving Parties respectfully request this Court to take judicial notice of the following facts: (1) the Cases are before this Court and have already been related; and (2) the Cases involve many common parties. For the purposes of this Motion, the parties to the various related lawsuits are referred to collectively as the "Parties."

1 **II. FACTS**

2 By now, many of the facts and positions of the Parties are well known to the Court.
3 However, a brief summary demonstrates why the Cases are appropriate for consolidation under
4 Federal Rule of Civil Procedure 42(a)(2).

5 **A. The United States' Case Against Moving Parties**

6 In Case No. C 07 06045 (SC), the United States seeks response costs, damages, civil
7 penalties, and other relief from Moving Parties and pilot John Cota. Moving Parties answered and
8 filed a Counterclaim against the United States and a Third-Party Complaint against the State of
9 California and Dr. Charles Calza.² Moving Parties' Counterclaim and affirmative defenses allege the
10 Incident was caused, in whole or in part, by the United States' tortious conduct. The remaining Third-
11 Party Complaint asserts Dr. Calza was negligent and is liable to the United States, in whole or in part,
12 for the damages the United States seeks to recover from Moving Parties.

13 **B. Chelsea, LLC's Case Against Moving Parties**

14 In Case No. CV 07 05800 (SC), the Plaintiffs filed a class action against Regal, Fleet,
15 Hanjin Shipping Co. Ltd., Synergy Maritime, Ltd, John Cota and the *M/V COSCO BUSAN* in rem for
16 damages arising out the closure of the crab fishery as a result of the Incident. The class, as defined in
17 the Second Amended Complaint, includes "all commercial fishing operations." The Court has not
18 certified a class. The Plaintiffs assert that Regal and Fleet were negligent, violated certain statutes,
19 and created a public nuisance. Moving Parties have argued that they are not responsible for the
20 damages arising out of the Incident and that others, including Captain Cota, are liable to the Plaintiffs.

21 **C. RLI Insurance Company's Case Against Moving Parties**

22 Case No. CV 08 02052 (SC) addresses insurance issues arising out of the Incident.
23 Plaintiff Continental Insurance Company filed suit against Moving Parties and others. Moving Parties
24 then filed (a) a counterclaim against Continental, (b) a cross-claim against Captain Cota and (c) a third
25 party complaint against the San Francisco Bar Pilots and the San Francisco Bar Pilots Benevolent and
26 Protective Association. RLI Insurance Company intervened in the case as a Plaintiff and filed its

27 _____
28 ² The Court recently dismissed the Third-Party Complaint against the State of California.

1 complaint in intervention on November 7, 2008. Both Continental and RLI seek a judicial declaration
 2 that (1) Regal, Fleet and the *COSCO BUSAN* are obligated to defend and indemnify John Cota in the
 3 civil and criminal actions against him arising out of the oil spill and (2) that Continental and RLI have
 4 no obligation until the duties of Regal, Fleet and the *COSCO BUSAN* are exhausted. Moving Parties
 5 seek a judicial determination that they are not required to defend, indemnify or hold harmless Captain
 6 Cota and the San Francisco Bar Pilots and the San Francisco Bar Pilots Benevolent and Protective
 7 Association for any civil or criminal actions.

8 **D. California's Case Against Regal**

9 In Case No. CV 08 2268 (SC), the State of California sued Regal for damage to the San
 10 Francisco-Oakland Bay Bridge resulting from the Incident. Regal answered and asserted
 11 counterclaims against the State alleging that the State's negligence and breach of duties was the cause
 12 of the Incident and that the State is liable under negligence and contribution principles to Regal for
 13 resulting damages. Although the State's Complaint does not seek recovery of its response costs and
 14 damages, such as natural resource damages, resulting from the oil spill, the State eventually must
 15 assert these claims in this litigation or lose the right to assert them pursuant to the doctrines of merger
 16 and bar.³ Therefore, Defendants anticipate the State eventually will either amend its Complaint in
 17 Case No. CV 08 2268 (SC) to assert such claims or attempt to join the lawsuit filed by the United
 18 States as a plaintiff.⁴

19 **E. Moving Parties' Case Against The Pilots Association, et al.**

20 In Case No. CV 08 5098 (SC), Moving Parties contend that Captain Cota, The Pilots
 21 Association, Captain McIsaac and Captain Nyborg are responsible for the damage caused by the
 22 Incident. Moving Parties allege various negligence and indemnification-based claims against these
 23 defendants. These defendants have not yet responded to the recently-filed and served complaint.

24 _____
 25 ³ See, e.g., Adams v. California Department of Health Services, 487 F.3d 684, 688-691 (9th Cir. 2007)
 26 (finding that the plaintiff's later-filed complaint arose out of the same transactional nucleus of facts
 27 asserted in the earlier-filed complaint and, further, that the district court did not abuse its discretion in
 28 dismissing the later-filed complaint with prejudice)

⁴ In the event the State fails to join this lawsuit, Moving Parties likely will file a motion to have the
 State added as an indispensable party pursuant to F.R.C.P. Rule 19.

1 III. ARGUMENT

2 The Federal Rules of Civil Procedure permit a district court to order the consolidation
 3 of cases pending before a court that involve a common question of law or fact. FED. R. CIV.
 4 P. 42(a)(2); 9A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE
 5 § 2382 (3d Ed. 2008) (“WRIGHT & MILLER”). A district court has broad discretion to decide whether
 6 consolidation is desirable. WRIGHT & MILLER, supra, at § 2383. Multiple actions arising out of the
 7 same tort, such as a single accident or disaster, are frequently ordered consolidated. Id. at § 2384; see
 8 also Stemler v. Burke, 344 F.2d 393 (6th Cir. 1965) (affirming consolidation of multiple personal
 9 injury actions resulting from multi-vehicle collision); Enterprise Bank v. Saettele, 21 F.3d 233, 235
 10 (8th Cir. 1994) (holding that the single essential requirement is questions of law or fact common to the
 11 cases that are to be consolidated); Plough v. Baltimore & O.R. Co., 172 F.2d 396 (2d Cir. 1949)
 12 (affirming consolidation for trial of four separate actions against a railroad for damages sustained in a
 13 grade crossing accident). Furthermore, in determining whether consolidation is appropriate, a court
 14 “weighs the saving of time and effort consolidation would produce against any inconvenience, delay,
 15 or expense that it would cause.” Huene v. U.S., 743 F.2d 703, 704 (9th Cir. 1984).

16 A. Common Issues Of Fact And Law Weigh In Favor Of Consolidation

17 The Cases involve nearly identical issues of fact and numerous related legal issues.
 18 The most obvious link between the Cases is their mutual origin — the Incident. As a result of this
 19 common origin, the Cases share a host of common legal and factual issues. These issues include the
 20 allocation of fault for the Incident and the resulting damages attributable to each Party. Because the
 21 State of California is a co-trustee with respect to the natural resource damages, both the State and the
 22 United States will be seeking damages for the same injury.

23 In the Cases, Moving Parties assert that the State of California, the United States,
 24 Dr. Calza, Captain Cota, and others are responsible, in whole or in part, for the Incident. Thus, one of
 25 the principal issues in the Cases is the culpability of each of the Parties for the Incident and each
 26 Party’s resulting damages. Discovery in each of the Cases, therefore, necessarily will overlap, and
 27 will encompass many of the same witnesses and documentary evidence. To avoid inconsistent
 28 discovery or other pre-trial rulings, the Cases should be consolidated for pre-trial purposes with all

1 potentially-culpable Parties represented and involved in pre-trial proceedings.

2 **B. Failure To Consolidate The Cases Will Prejudice All The Parties And Cause**
 3 **Unnecessary Confusion**

4 If the Cases are not consolidated, there is a significant risk of prejudice to Moving
 5 Parties, to other named Parties in the Cases *and* to third parties. As discussed above, many
 6 individuals are percipient and/or expert witnesses in multiple Cases. Further, many documents are
 7 relevant to issues raised in the various Cases. Forcing the Parties to conduct separate discovery
 8 (including multiple depositions and document productions) in the different Cases would entail an
 9 unnecessary duplication of time and resources. Discovery currently is stayed pending the criminal
 10 proceedings arising out of the Incident. However, once discovery resumes, all discovery in the Cases
 11 should be consolidated.

12 **C. Consolidation Of The Cases Will Achieve Benefits For The Court And The Parties**

13 If the Cases are not consolidated, Moving Parties will move to join the State as an
 14 indispensable party to the United States' case. See FED. R. CIV. P. 19(a) ("A person . . . shall be joined
 15 as a party in the action if . . . the person claims an interest relating to the subject of the action and is so
 16 situated that the disposition of the action may . . . impair or impede the person's ability to protect that
 17 interest or leave any of the persons already parties subject to a substantial risk of incurring double . . .
 18 or otherwise inconsistent obligations by reason of the claimed interest."). Consolidation will avoid the
 19 need to address this issue since the State already is a Plaintiff and Counter-Defendant in one of the
 20 related Cases – Case No. CV 08 2268 (SC).

21 Furthermore, as discussed above, consolidation of the Cases will benefit the discovery
 22 process. Not only will consolidation streamline the service and response to written discovery and
 23 coordination of depositions, but it will help ensure that the discovery conducted is more effective
 24 because all the Parties will be able to engage in the process together. Finally, consolidation of the
 25 Cases will relieve numerous witnesses of the significant burden of having to appear at numerous
 26 depositions.

27 **IV. CONCLUSION**

28 For the foregoing reasons, Defendants' respectfully request that the Court consolidate

1 for pre-trial purposes this action with the following related Cases:

- 2 ➤ *Chelsea, LLC v. Regal Stone Limited, et al.*, Case No. CV 07 05800 (SC).
- 3 ➤ *The Continental Insurance Co. v. Regal Stone Limited, et al.*, Case
- 4 No. CV 08 02052 (SC).
- 5 ➤ *The People of the State of California v. Regal Stone Limited, et al.*, Case
- 6 No. CV 08 2268 (SC).
- 7 ➤ *Regal Stone Limited, et al. v. John J. Cota, The San Francisco Bar Pilot's*
- 8 *Association, et al.*, Case No. CV 08 5098 (SC).

11 DATED: December 19, 2008

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